

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A22-0904**

State of Minnesota,  
Respondent,

vs.

William Lee Carter,  
Appellant.

**Filed April 24, 2023  
Affirmed  
Halbrooks, Judge\***

Olmsted County District Court  
File No. 55-CR-21-5211

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mark A. Ostrem, Olmsted County Attorney, James E. Haase, Assistant County Attorney,  
Rochester, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant  
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Gaïtas, Presiding Judge; Wheelock, Judge; and  
Halbrooks, Judge.

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

## **NONPRECEDENTIAL OPINION**

**HALBROOKS**, Judge

Carter challenges his conviction of escape from custody, arguing that the district court erred when it allowed evidence of other acts that was not offered to rebut any of his defenses. Because we conclude that any alleged error did not impact Carter's substantial rights, we affirm.

### **FACTS**

Appellant William Lee Carter was convicted of first-degree criminal sexual conduct in 2011 and sentenced to 144 months in prison followed by ten years of conditional release. When he was released to intensive supervised release at a halfway house in June 2021, one condition of his release was that he wear a GPS tracking bracelet. The state alleged that on July 9, 2021, Carter cut and removed his GPS bracelet and left the halfway house. Carter was apprehended in South Carolina three days later. On September 10, 2021, the state charged Carter with escape from lawful custody while on a charge or conviction of a crime under Minnesota Statutes section 609.485, subdivision 2(1) (2020).

Carter waived his right to counsel and represented himself. Before trial, Carter noticed his intent to raise defenses of misrepresentation, misinformation, and entrapment. In response to the state's motion to preclude those defenses, Carter explained that he was caught with a cell phone at the halfway house and that an employee told him to remove his GPS bracelet and leave the premises. Based on this understanding of Carter's defenses, the district court addressed the state's motion to allow evidence of a prior incident in which Carter cut off his GPS bracelet at the same halfway house in February 2021, five months

before the July escape. The state offered this other-acts evidence to rebut Carter's defenses and to show lack of mistake and state of mind. In its pretrial ruling, the district court allowed the evidence over Carter's objection:

CARTER: Your Honor, I would say that the act would be prejudicial. And it's the same act, not similar act. It's the similar act, not the same act. So I would ask that it not be brought up.

COURT: Okay. All right. Thank you, Mr. Carter. So I am looking at the criteria under 404(b). . . . [The prosecutor] has explained what the evidence will be offered to prove, and I'm satisfied that it does prove a relevant point here to the degree that a defense of lack of knowledge, a lack of intent, that another person was really the originator of this idea of leaving and so forth, that this was proper conduct not improper conduct prohibited by Mr. Carter's situation. To the degree that a defense of that nature is being raised, this rebuts that.

The testimony at trial established the following circumstances of the offense on July 9, 2021. Carter was released from incarceration and arrived at a halfway house on June 1, 2021, outfitted with a GPS monitoring bracelet. Just over a month later, on July 9, his intensive-supervised-release agent received a call from the GPS monitoring system signaling that Carter's GPS bracelet had been tampered with. The agent then spoke with an employee of the halfway house, who stated that Carter had left the facility and that "there was a knife along with the GPS that was previously around his leg" in Carter's room.

The halfway-house employee testified that the facility allowed each resident only one cell phone, which they must turn in every night. He stated that, on the night of the incident, he observed Carter using a second cell phone. The employee confronted Carter and tried to access the contents of the phone, but Carter said that he could not remember

the phone's PIN access code. After working on the PIN issue for "[a] couple hours," the employee warned Carter that if he could not get into the phone, it may be a termination offense. The employee testified that when he brought up termination, Carter became anxious and talked about cutting his monitor off and "at one point he went into his room and cut his monitor and left." The employee testified that he did not tell Carter to cut the bracelet or to leave. But he observed the bracelet and knife on the floor of Carter's room, and he saw Carter leaving the facility on the facility's security footage. A Minnesota Department of Corrections (DOC) agent testified that, as part of his investigation, he listened to Carter's outgoing prison calls starting in April 2021 and that in the calls Carter had explained that he was going to, essentially, "go to [the halfway house] and work for approximately a month and then abscond once he had enough money saved up."

The prosecutor introduced the other-acts evidence in his case-in-chief. Carter's intensive-supervised-release agent testified that Carter was first released from incarceration to the halfway house in February 2021. The agent got a call less than an hour after he dropped Carter off, stating that the GPS bracelet was tampered with. Carter was apprehended on the same day about four hours after a warrant issued for his arrest. The agent stated that Carter was sentenced to 120 additional days in prison, after which he was again released to the same halfway house in June 2021.

The district court gave the jury a cautionary instruction before the agent's testimony, and Carter did not object to the testimony. The DOC agent who analyzed Carter's outgoing prison calls described similar calls during Carter's imprisonment preceding the February 1 incident. The district court again gave a cautionary instruction, and Carter did not object.

Although Carter cross-examined the prosecution’s witnesses, he chose not to testify. And he did not call any witnesses. Ultimately, Carter did not raise his expected defense that the halfway-house employee instructed him to remove his GPS bracelet. The prosecutor did not reference the February 2021 other-acts evidence in his closing argument, and the district court included a cautionary instruction in its final instructions to the jury. The jury returned a guilty verdict on the escape charge, and the district court sentenced Carter to 27 months in prison.

This appeal follows.

## DECISION

Carter argues on appeal that the district court erred by admitting evidence of the February 2021 prior incident. Evidence of other crimes is generally excluded at trial unless offered as “proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Minn. R. Evid. 404(b). This protection seeks to prevent the jury from convicting a defendant based solely on the defendant’s propensity for crime rather than based on evidence of guilt of the crime charged. *State v. Spreigl*, 139 N.W.2d 167, 171-72 (Minn. 1965). Admissible other-acts evidence must, among other things, be relevant and material to the state’s case and the probative value of the evidence cannot be outweighed by its potential for prejudice. *State v. Ness*, 707 N.W.2d 676, 686 (Minn. 2006). Carter challenges the other-acts evidence on the grounds of relevance and prejudice.

Although Carter objected pretrial to the admission of the other-acts evidence, his objection was not on the basis raised on appeal—that the evidence was improper because it was not introduced to rebut a defense. We generally review district court rulings on the

admission of other-acts evidence for an abuse of discretion. *State v. Griffin*, 887 N.W.2d 257, 261 (Minn. 2016). But because Carter did not object on the same basis in district court, we review the admission of the other-acts evidence here for plain error. *See State v. Vick*, 632 N.W.2d 676, 684-85 (Minn. 2001). This analysis requires us to determine whether there was an error, whether that error was plain, and whether any plain error affected Carter’s substantial rights. *See id.* at 685. If these three prongs are met, we consider whether the error should be addressed to “ensure fairness and the integrity of the judicial proceedings.” *Id.* (quotation omitted). But if a defendant cannot establish that an error impacted his substantial rights, we need not consider the other factors. *State v. Goelz*, 743 N.W.2d 249, 258 (Minn. 2007). Because we conclude here that, even if there was an error, it did not impact Carter’s substantial rights and we need not address whether the district court erred.<sup>1</sup>

An error impacts a defendant’s substantial rights only when there is “a reasonable likelihood that the absence of the error would have had a significant effect on the jury’s verdict.” *State v. Horst*, 880 N.W.2d 24, 38 (Minn. 2016) (quotation omitted). In determining the effect, we consider “the strength of the evidence against the defendant, the pervasiveness of the improper suggestions, and whether the defendant had an opportunity to (or made efforts to) rebut the improper suggestions.” *State v. Fraga*, 898 N.W.2d 263, 277 (Minn. 2017) (quotation omitted).

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<sup>1</sup> Although we do not reach the issue of whether the district court’s decision to admit the evidence was error, we suggest that a conditional ruling precluding the state from introducing the other-acts evidence until Carter raised his defense at trial would have been preferable to mitigate the risks associated with the introduction of other-acts evidence.

The state had a strong case, even without the other-acts evidence, that Carter escaped lawful custody on a conviction of a crime. *See* Minn. Stat. § 609.485, subd. 2(1). The parties stipulated that Carter was in lawful custody on a conviction of a crime, and the prosecutor presented witnesses at trial whose testimony was strong as to escape. The evidence showed that Carter discussed cutting off his GPS bracelet before he did so; that Carter called people from prison discussing his plans to abscond; and that multiple individuals observed the GPS bracelet and the knife on the floor of what they identified as Carter's room; that the halfway-house employee observed Carter leaving the facility on the security footage; and that law-enforcement personnel tracked Carter's location and apprehended him in South Carolina.

Further, the effect of the other-acts evidence was mitigated by the district court's cautionary instructions. Despite Carter's assertion that the jury instructions, in fact, encouraged the jury to consider the other-acts evidence, the instructions stated that the evidence was admitted "for the limited purpose of assisting you in determining whether the defendant committed those acts with which the defendant is charged in the complaint." The instructions stated that the jury was not to convict Carter because of the February 2021 incident. We presume that the jury followed the district court's instructions. *See State v. Clark*, 755 N.W.2d 241, 261 (Minn. 2008).

In addition, the prosecutor did not address the evidence in his opening, closing, or rebuttal arguments. The supreme court has considered the fact that the prosecutor "did not mention the [evidence] in his closing arguments" when determining there was no reasonable likelihood that allegedly erroneously admitted evidence impacted a verdict. *See*

*Fraga*, 898 N.W.2d at 277. Finally, Carter had the opportunity to rebut the other-acts evidence in cross-examination and in his closing argument. His cross-examination of the halfway-house employee was fairly lengthy. But despite having the opportunity to address the issue, Carter chose not to.

Because the state's case was strong, the prosecutor and the district court limited the use of the evidence, and Carter had the opportunity to rebut the evidence, we conclude that even if the district court's decision to admit the other-acts evidence was erroneous, it did not impact Carter's substantial rights.

**Affirmed.**